

einer Zeitung, gratis, mit knappen Texten und dicken Überschriften ein kurzes Erfassen dessen erlaubt, was die Öffentlichkeit im Moment bewegt.¹²⁾

V. Schlussfolgerung

Gerade im Hinblick auf den schwindenden Parteienstaat sind die sozialen Netze und digitalen Kommunikationsformen vielleicht die letzte Hoffnung, wie in Zukunft Interessen artikuliert und Menschen mobilisiert werden können. Vom Arabischen Frühling bis hin zu „Occupy“, „Blockupy“ und „Audimaxismus“ erwiesen sich die digitalen Medien in dieser Hinsicht als höchst effektiv. Unklar bleibt jedoch, ob die digitalen Medien auch die einmal mobilisierten Bewegungen und artikulierten Interessen in stabile politische und demokratisch legitimierte Verhältnisse und nachhaltige Lösungen überführen können. Wirft man etwa einen Blick auf das Schicksal der Piratenpartei in Deutschland, könnte man schlussfolgern, dass Grund besteht, an der Problemlösungskompetenz digitaler Demokratieformen noch zu zweifeln.¹³⁾

¹²⁾ Driendl, Der Markt für Gratiszeitungen in Österreich (2005); siehe auch Fidler, Im Vorhof der Schlacht. Österreichs alte Medienmonopole und neue Zeitungskriege (2004).

¹³⁾ Siehe zB den Artikel von Jacobsen in „Zeit Online“, <http://www.zeit.de/politik/deutschland/2013-09/Piraten-Abschied-Thesen> (18. 11. 2013).

Peggy Valcke

Measuring Media Pluralism in the Digital Era

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I. Introduction

“Media plurality is about the information that people consume on a daily basis, which informs their views and perspective on the world. ... On the face of it, this is less of an issue in the digital age. ... However, appearances may be deceiving...”

With these words, the Department for Culture Media & Sport in the United Kingdom (UK) launched its consultation on media ownership and plurality in July 2013.¹⁾ A number of recent events in the United Kingdom, in particular the proposed acquisition of BSkyB by Rupert Murdoch’s News Corporation and the phone hacking scandal, engendered intense debate on issues of media freedoms and pluralism. The currently most recent in a series of initiatives that were taken in response to growing concerns over concentration and pluralism in the media, is the House of Lords Select Committee on Communications report on media plurality, which was published on 4th February 2014. The report contains a number of proposals for reform of current plurality policy and regulation in the UK, which will be discussed further in this chapter.

¹⁾ UK Department for Culture Media & Sport (DCMS), Media Ownership and Plurality Consultation (2013), <https://www.gov.uk/government/consultations/media-ownership-and-plurality>.

But also in other Member States, as well as at European Union (EU) level, media pluralism has received considerable attention in previous years. Worrying developments in countries like Italy, Hungary, Bulgaria, Romania, the Czech Republic and Estonia, led the European Parliament to adopt a series of resolutions in which it urged the European Commission to take the necessary steps (including the adoption of legislative measures) to ensure a high standard of protection of pluralism in the Member States.²⁾ With the report of the High Level Group on Media Freedom and Pluralism being published in January 2013, the European Citizens' Initiative for Media Pluralism being launched in February of the same year, and a resolution of the European Parliament on "the EU Charter: standard settings for media freedom across the EU" being adopted a few months later,³⁾ 2013 seemed like "the year of media pluralism" at EU level.

Why is it, that we care so much about media pluralism?

To use the words of Miklos Haraszti, former OSCE Representative on Freedom of the Media, "*media pluralism is the key that unlocks the door of freedom of information and freedom of speech*" (Haraszti, 2011). As will be explained in Section II, freedom of expression, media freedom and media pluralism are intrinsically linked. Although, broadly speaking, media pluralism can be understood to refer to the diversity in the media, it should be considered a multi-faceted concept whose meaning has been highly contested in previous years. As Karppinen rightly points out,⁴⁾ opinions on the precise meaning and nature of media pluralism as a theoretical, political or empirical concept are many, and it can easily be adjusted to different political purposes (he himself arguing to understand media pluralism as a normative value that refers to the distribution of communicative power in the public sphere). So, depending on the political agenda or normative goals pursued, media pluralism has been defined in a broad range of terms including "plurality of ownership", "number of media outlets", "variety of political opinions reflected in the media", "cultural diversity of media content", "diversity of viewpoints available and consumed", "pluralism across and within media enterprises" (external v. internal pluralism), "distributed influence over public opinion and the political agenda", "localism in the media" etc.

As the European continent's leading human rights standard-setting organization, the Council of Europe has stressed the importance of media pluralism on many occasions and has attempted to appropriately define the concept. My personal favorite – because of its comprehensiveness – is the description given by

²⁾ See, for instance, European Parliament Resolution of 22 April 2004 on the risks of violation in the EU and especially in Italy, of freedom of expression and information, OJ. C. 104 E, 30. 4. 2004, 1026; European Parliament Resolution of 25 September 2008 on concentration and pluralism in the media in the European Union, OJ. C. 8 E, 14. 1. 2010, C. 199 E, 37. 7. 2012, 154.

³⁾ For more details, see below, in Section IV of this chapter.

⁴⁾ Karppinen, Rethinking Media Pluralism: A Critique of Theories and Policy Discourse (2010).

the Council of Europe's Venice Commission in its 2005 Opinion on the Italian "Gasparri" and "Frattini" laws:⁵⁾

"Media pluralism is achieved when there is a multiplicity of autonomous and independent media at the national, regional and local levels, ensuring a variety of media content reflecting different political and cultural views. In the Commission's opinion, internal pluralism must be achieved in each media sector at the same time: it would not be acceptable, for example, if pluralism were guaranteed in the print media sector, but not in the television one. Plurality of the media does not only mean, in the Commission's view, the existence of a plurality of actors and outlets, it also means the existence of a wide range of media, that is to say different kinds of media."

The present chapter is based on the presentation I delivered at the "9. Österreichischen Rundfunkforum: Meinungsvielfalt im Rundfunk und in den Online-Medien" in October 2013 in Vienna, but has been updated to take account of recent developments that occurred since then. It will start by putting the concept of media pluralism in the normative and legal context of Art 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The next section will look at the impact of the Internet and progressing convergence between traditional and online media on pluralism in the media. The last section will discuss recent trends in media monitoring systems in Europe, with a focus on the UK and EU, to see how online media may affect existing measurement systems for media pluralism, and ultimately existing regulations to safeguard media pluralism.

II. Media Pluralism as Normative and Legal Notion

As noted in the introduction, media pluralism is traditionally understood in a policy context as referring to a situation in which there is a multiplicity of autonomous and independent media at the national, regional and local levels, ensuring a variety of media content reflecting different political and cultural views. Throughout its case law, the European Court of Human Rights (ECtHR) has reaffirmed that media pluralism is essential for the functioning of a democratic society and is the corollary of the fundamental right to freedom of expression and information as guaranteed by Art 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Whereas freedom of expression might be thought of as "the right to speak" and freedom of information can be characterised as "the right to know", pluralism of the media could be considered as "the right to choose".⁶⁾

On several occasions, the Court has stated that freedom of expression, as protected by Art 10, "is applicable not only to 'information' or 'ideas' that are

⁵⁾ Venice Commission, Opinion on the compatibility of the "Gasparri" and "Frattini" laws of Italy with the Council of Europe standards in the field of freedom of expression and pluralism of the media, adopted at its 63rd Plenary Session (10-11 June 2005).

⁶⁾ Haraszti, Media Pluralism and Human Rights – Issue Discussion Paper prepared for the Council of Europe's Commissioner for Human Rights (2011), available from <https://wcd.coe.int/ViewDoc.jsp?id=1881589>.

favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any section of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no 'democratic society'." ⁷⁾ A second pertinent principle that may be derived from the case law of the ECtHR with regard to media pluralism, is that the State is the ultimate guarantor of it, especially in relation to audiovisual media, whose programmes are often broadcasted very widely. In the recent *Centro Europa 7* case, the Court (sitting as Grand Chamber) condemned Italy for failing to comply with its positive obligation under Art 10 ECHR to put in place an appropriate legislative and administrative framework to guarantee effective media pluralism. The Italian legislative framework for the audiovisual sector, which had resulted in a situation in which *Centro Europa 7* had been unable to operate in the television broadcasting sector for more than ten years despite having been granted a licence in a public tendering procedure, was found to lack clarity and precision and, hence, not to satisfy the foreseeability requirements under Art 10, § 2 ECHR. ⁸⁾

Throughout a series of media pluralism related recommendations, resolutions and declarations adopted by the Parliamentary Assembly and the Committee of Ministers, the Council of Europe has recommended a range of measures to promote media pluralism to its member states. These measures all focus on either structural or ownership diversity (source diversity) or on content diversity in terms of political and cultural views. ⁹⁾

Also at the national level, constitutional courts have traditionally established an intrinsic link between media pluralism and the human right of free speech. By doing so, they have given the notion of media pluralism constitutional value, without however further describing the term. ¹⁰⁾

In the EU Charter of Fundamental Rights, media pluralism is explicitly referred to. In its Art 11, § 2, the Charter stipulates that "The freedom and plural-

⁷⁾ See, for instance, ECtHR, *Handyside*, judgment of 7 December 1976, *Publ. Eur. Court H.R.*, Series A No 24, § 49; ECtHR, *Otto-Preminger-Institut*, judgment of 20 September 1994, *Publ. Eur. Court H.R.*, Series A No 295-A, § 49; ECtHR, *Sürek* (No 1), No 26.682/95, judgment of 8 July 1999, *Reports* 1999-IV, 353, § 58; ECtHR, *Bergens Tidende* and others, No 26.132/95, judgment of 2 May 2000, *Reports* 2000-IV, 371, § 48; or ECtHR, *Tammer*, No 41.205/98, judgment of 6 February 2001, *Reports* 2001-I, 263, § 59.

⁸⁾ ECtHR, *Centro Europa 7 S.R.L. and di Stefano*, judgment of 7 June 2012, <http://hudoc.echr.coe.int/sites/fra/pages/search.aspx?i=001-111399>.

⁹⁾ For an overview, see: *Klimkiewicz*, *Pluralism in Europe: Concepts and Conditions*, ed. *Czepek/Hellwig/Nowak* (2009) 62-64. The two most relevant recommendations are: Recommendation No R (99) 1 on Measures to Promote Media Pluralism, adopted by the Committee of Ministers on 19 January 1999, and Recommendation Rec (2007) 2 on Media Pluralism and Diversity of Media Content, adopted by the Committee of Ministers on 31 January 2007, available from <https://wcd.coe.int/wcd/ViewDoc.jsp?id=399303&Site=CM> and <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1089699> respectively.

¹⁰⁾ For a detailed discussion and references to case law of the French, Italian and German Federal Constitutional Courts, see *Valcke*, *Digitale Diversiteit – Convergentie van Media-, Telecommunicatie- en Mededingingsrecht* [Digital Diversity – Convergence of Media, Telecommunications and Competition Law] (2004) 127-148.

ism of the media shall be respected." In Section IV of this contribution, we will discuss in more detail recent EU initiatives in relation to media pluralism.

From a normative perspective, the notion of media pluralism is grounded in the concept of the public sphere – in the conceptualisation by *Jürgen Habermas* seen a societal space where the exchange of information and views of common concern take place so that public opinion can be formed to shape political will. ¹¹⁾ There appears to be consensus in the political theory literature that people need information to play a role as citizens in democratic societies, and – as the media play a crucial role in offering access to a diverse information offer – there is a consensus that media pluralism is important for democracy. ¹²⁾ A well-balanced diet of contributions from different sources that reflect different viewpoints, ideas and ideals is widely perceived as the matrix for cultural exchange, democratic participation and personal development. ¹³⁾

III. Online Media: Blessing or Curse for Media Pluralism?

1. The Good ...

The question of the impact of the Internet and online media on pluralism and diversity is a complex one. Surely, there are reasons for optimism, and several media scholars have praised the contemporary media environment, characterizing it with terms, such as the "information paradise", ¹⁴⁾ "age of plenty", ¹⁵⁾ "communicative abundance", ¹⁶⁾ "mass self-communication", ¹⁷⁾ "supersaturation", ¹⁸⁾ or "cultural chaos". ¹⁹⁾ As *Karppinen* notes, ²⁰⁾ it has become commonplace in both academic and policy discourse to celebrate the digital media as a tool that inevitably leads toward democratization and pluralization of the public sphere and to the emergence of various grass-roots civil society activities.

¹¹⁾ *Klimkiewicz*, *Media Pluralism: European Regulatory Policies and the Case of Central Europe*, European University Institute Working Papers, RSCAS No 2005/19, EUI Robert Schuman Centre for Advanced Studies (2005), http://www.iue.it/RSCAS/WP-Texts/05_19.pdf.

¹²⁾ *Ofcom*, *Measuring Media Plurality – Ofcom's advice to the Secretary of State for Culture, Olympics, Media and Sport* (2012), available from <http://stakeholders.ofcom.org.uk/consultations/measuring-plurality/>.

¹³⁾ *Sunstein*, *Republic.com* 2.0 (2007).

¹⁴⁾ *Helberger*, *Diversity by Design*, *Journal of Information Policy* 1 (2011) 441-469.

¹⁵⁾ *Ellis*, *Seeing Things: Television in the Era of Uncertainty* (2002).

¹⁶⁾ *Keane*, *Public Life in the Era of Communicative Abundance* (1999), available from <http://cjc-online.ca/index.php/journal/article/view/1094/1000>.

¹⁷⁾ *Castells*, *Communication, power and counter-power in the network society*, *International Journal of Communication* 1 (1) (2007) 238-266.

¹⁸⁾ *Gittlin*, *Media Unlimited* (2002).

¹⁹⁾ *McNair*, *Cultural Chaos – Journalism, News and Power in a Globalised World* (2006).

²⁰⁾ *Karppinen*, *Rethinking media pluralism and communicative abundance*, *Observatorio (OBS*) Journal* 11 (2009) 151-169 (153).

The Internet has offered solutions to forms of scarcity that once characterised the analogue era, such as scarcity of production facilities (limiting the number of sources that could speak), or scarcity of distribution means (limiting the number of gatekeepers controlling access to information). It is this fact of scarcity that imposes power, as Verhulst notes,²¹ and that may threaten pluralism in the media; because of scarcity, those intermediaries that control the markets are in a privileged position to exercise power and shape the public opinion.

Thanks to the Internet (the global "network of networks" carrying an extensive range of information and communication resources and services over multiple wired and wireless networks), we have witnessed an exponential increase in journalistic and other forms of information available to citizens, under the form of numerous blogs, autonomous communication networks, new social movements, and alternative media. In today's network society, basically everyone can become a journalist or broadcaster online, even with very limited technical or financial means – with only a smartphone and Internet connection at your disposal, you can reach a massive audience worldwide. So new participatory and decentralized modes of public communication allow citizens to compete with professional journalists for the creation and dissemination of political information. This breaks the power of traditional elites to control what is considered news. Moreover, audiences increasingly filter and personalise information and choose how, when, and where communication is received. With such shift from a supply-driven to a demand and search-driven media environment, the new media are seen to redistribute control over communication toward individual users.²²

As Manuel Castells²³ has argued, the global web of horizontal communication networks has induced a new form of communication, which he calls "mass self-communication". It essentially opened up an unlimited diversity of autonomous communication flows and an unparalleled opportunity for political and social movements to intervene in public debates. For Castells, this is a development which is fundamentally changing the dynamics of power relations in our society. Other scholars have joined him in describing recent developments in terms of provoking a fundamental shift in the dynamics of public communication and the public sphere from uniformity and control towards plurality and even anarchy.²⁴ It is in the same vein that the European Commission²⁵ noted in its Digital Agenda Communication that:

"The Internet is also a driver of greater pluralism in the media, giving both access to a wider range of sources and points of view as well as the means for indi-

viduals – who might otherwise be denied the opportunity – to express themselves fully and openly."

Such observations may tempt us to think that concerns for pluralism and diversity have become not only increasingly contested, but even analytically obsolete or anachronistic, or – as Karppinen bluntly puts it: "*In what sense is it then meaningful to speak of media pluralism when our media environments are characterized more by abundance than scarcity?*" It is the same idea that was expressed in the aforementioned (first part of the) quote by the UK Department for Culture Media & Sport in its public consultation on media ownership and plurality (UK DCMS, 2013): "*Media plurality is about the information that people consume on a daily basis, which informs their views and perspective on the world. ... On the face of it, this is less of an issue in the digital age.*"

But, is this an accurate view...? Or only one side of the mirror....?

2. The Bad ...

There is a growing body of literature pointing out reasons for skepticism about digital media. It is providing evidence that, contrary to popular belief, the Internet has not fundamentally changed the concentrated structure typical of mass media, but has actually brought about new forms of exclusion and hierarchy. Karppinen²⁶ refers, for instance, to Hindman,²⁷ who has argued that the Internet has done little to broaden political discourse but in fact empowers a small set of elites – some new, but most familiar. He also quotes Baker who has claimed that the online world tends to be more concentrated than the conventional media world.²⁸ Both these authors have used methods of empirical diversity assessment to demonstrate that, although the Internet greatly expands the amount of information sources people can choose from, in practice, the structure of the medium creates a high degree of concentration of content among a small handful of sites. Internet traffic follows an extreme winners-take-all pattern, as Hindman has shown. Relying on portals, link structure and search engines, most people are directed to a few successful sites, while the rest remain invisible to the majority of users. In other words, in the online world, there are many who speak, but only few with an audience.

According to some scholars, the main problem of today is that there is even too much diversity. As Helberger et al have argued,²⁹ in web 2.0 it is not content but attention that is scarce: "*users – lost in plenty – will flock around a few sources they can trust, either because they are affiliated with well-known established media, or because they are popular among large numbers of fellow users*". This phenom-

²⁶ Karppinen (FN 20) 152.

²⁷ Hindman, *The Myth of Digital Democracy* (2008).

²⁸ Baker, *Media Concentration and Democracy. Why Ownership Matters* (2007) 112.

²⁹ Helberger/Leurdijk/de Munck, *User Generated Diversity. Some Reflections on How to Improve the Quality*.

of Amateur Productions (2010) 57, available from http://www.ivir.nl/publications/helberger/Communication&Strategies_2010_77.pdf.

²¹ Verhulst, *Mediation, Mediators and New Intermediaries. Implications for the Design of New Communications Policies*, in Napoli (ed), *Media Diversity and Localism. Meaning and Metrics* (2007) 117.

²² Karppinen (FN 20) 152.

²³ FN 17.

²⁴ Karppinen (FN 20) 153, with reference to McNair (FN 19).

²⁵ Communication From the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A Digital Agenda For Europe. Brussels, 26. 8. 2010. COM (2010) 245 final/2, 30.

enon – the abundance of content and the difficulty of finding and identifying quality content resulting in an even higher concentration of the audience on a few ‘quality media’ outlets – has also been described by *Baker* who calls this the “Hollywood effect”.³⁰ *Sunstein*³¹ coined the terms “information cocoons” and “echo chambers”, to describe the phenomenon of users who – despite having an almost unlimited array of content at their fingertips – limit their own horizons by cocooning themselves in fragmented spheres in which their own personal prejudices will be reinforced rather than challenged. *Habermas*³² has equally expressed concerns about the implications of the Internet on the public sphere, noting that in liberal-democratic regimes the Internet serves only to fragment focused audiences into “a huge number of isolated publics”.

Such fragmentation is further reinforced through the growing personalisation of media offers and the use of algorithms selectively guessing what information a user would like to see based on information about the user (such as location, past click behaviour and search history). As a result, users become separated from information that disagrees with their viewpoints, effectively isolating them in their own cultural or ideological “filter bubbles” – a term coined by Internet activist *Eli Pariser*.³³ Prime examples are Google’s personalised search results and Facebook’s personalised news stream.

Concerns have also arisen with regard to the rising structural power of Internet search engines – acting as gatekeepers and determining (in function of their commercial interests) what users worldwide can see and do online.³⁴ In particular with regard to journalism, *Jakubowicz*³⁵ warns for the risk of dependence on a single search engine (what he calls the “Google-isation of research”) and for excessive journalistic self-referentiality (given that basically only already published information is adopted).

*Karpinen*³⁶ also highlights the notion of enclosure, referring to *Castells*³⁷ and *Dahlgberg*³⁸, as another concept that is often raised to criticize expanding corporate media power over the Internet: “This basically refers to restrictions on media content and the controlling of media uses, and it includes issues such as subscription services, absence of external links, lack of interoperability, and software

³⁰ FN 28.

³¹ FN 13.

³² *Habermas*, Political Communication in Media Society: Does Democracy Still Enjoy an Epistemic Dimension? The Impact of Normative Theory on Empirical Research Communication Theory, 16 (4) (2006) 411–426 (422).

³³ *Pariser*, The Filter Bubble: How the New Personalized Web Is Changing What We Read and How We Think (2011).

³⁴ *Hindman* (FN 27) 80.

³⁵ *Jakubowicz*, A New Notion of Media? Media and media-like content and activities on new communication services, Background Text for the 1st Council of Europe Conference of Ministers Responsible for Media and New Communication Services, Reykjavik, Iceland (2009) 34.

³⁶ *Karpinen* (FN 20) 105–108.

³⁷ *Castells*, Communication Power (2009).

³⁸ *Dahlgberg*, The Corporate Colonization of Online Attention and the Marginalization of Critical Communication, Journal of Communication Inquiry 29 (2005) 160–180.

tie-ins, and other means of building walls around content by technical or economic means”.³⁹

So, to resume, whereas the Internet has been heralded as a democratic medium that helps ordinary people get heard and has been praised for its vast potential to overcome problems of scarcity that limited information creation and distribution in the analogue era, there are also a number of trends and phenomena, provoked by the Internet and digitisation of our media, that seem distressing. The fragmentation and polarization of public discourse, that risk to occur when users get less exposure to conflicting viewpoints and are isolated intellectually in their own informational bubble, runs counter to what *Sunstein*⁴⁰ identifies as two requirements for a well-functioning system of free expression and deliberative democracy: 1. that people are exposed to materials and topics that they would not have chosen in advance (to enable engagement between differing views and as guards against fragmentation and extremism), and 2. that citizens share a range of common experiences which can provide a form of “social glue” (to be able to understand one another, engage in public deliberation and address social problems).

In other words, discussions about pluralism and diversity are far from being outdated. They may require a new vocabulary, target new players and focus on new challenges, but some of the core issues remain unaltered: how to tackle excessive forms of influence on public opinion that would undermine diversity of viewpoints expressed and consumed, and how to address new forms of scarcity?⁴¹ It explains why the UK Department for Culture Media & Sport continued its aforementioned quote with: “However, appearances may be deceiving...”⁴²

3. And the Ugly

The ambiguous effects of digital and online media on media pluralism, as described in the previous subsections, have been perfectly summarized by *van Hoboken*⁴³:

“Generally, the rise of the Web and the venues for publishing and access to information it offers can be seen as a blessing from the perspective of diversity and pluralism. The online environment has produced wider opportunities to contribute to the public information environment and has radically widened the opportunities to access information and ideas or worldwide audiences. At

³⁹ *Karpinen* (FN 20) 151.

⁴⁰ *Sunstein* (FN 13) 5 f.

⁴¹ According to *Sunstein* (FN 13) it is precisely the individualization and fragmentation of media use that is making publicly accountable regulation and general interest media more relevant than ever before.

⁴² UK Department for Culture Media & Sport (DCMS), Media Ownership and Plurality Consultation (2013), <https://www.gov.uk/government/consultations/media-ownership-and-plurality>.

⁴³ *Van Hoboken*, Search Engines, Pluralism and Diversity: What is at stake and how to move policy forward? in *Valcke/Sikösd/Picard*, Media Pluralism: Concepts, Risks and Global Trends, forthcoming 2014, part of the series Global Media Policy and Business, ed. *Iosifides/Sussman/Stearns*.

the same time, the online environment has also produced new bottlenecks, mediating institutions and apparent biases. On the one hand, the ease with which information and ideas can now be published may have solved some of the issues relating to pluralism and diversity in the context of content production and dissemination. On the other hand, the abundance of information and ideas online implies sharply increased competition between different online media for audiences, leading to what is sometimes denoted as an 'attention economy'.⁴⁴⁾

Consequently, as noted before, academic and policy discussions about media pluralism are still very much relevant today, but may require new concepts and metrics to understand and protect the values that we believe the media should embody in our society. And this search for a new policy framework may be the hardest exercise of all (hence, the title of this subsection). Whereas we intuitively understand that there are benefits and drawbacks of new media technologies, it is much harder to agree on the criteria and methods to evaluate the state of our media markets in terms of pluralism. Are, for instance, ownership concentration parameters still relevant (to the same extent) in an era where consumers increasingly draw on a range of sources for news and current affairs ("multi-source"), engage with the media, and may themselves affect the ability of media owners to influence public opinion? How to cope with the breakdown of traditional market boundaries, or with the threats to the traditional business models for newspapers and journalism?

Both regulators and policy makers throughout Europe are currently grappling with these questions. The following section will describe some recent developments in media monitoring systems in Europe. Although a number of identical trends can be revealed, it remains difficult to reach consensus on the specifics of a reference framework for the measurement of, and regulation for, media pluralism in EU Member States.

IV. Recent Developments in Media Monitoring Systems in Europe

1. General Trends

Recent trends in media monitoring systems – in Belgium, the Netherlands, UK, Germany etc – show a clear shift towards more sophisticated measurement frameworks that also look at online offerings, content diversity, the actual consumption of media and cross-media impact. In 2010, the German Kommission zur Ermittlung der Konzentration im Medienbereich (KEK), which is in charge of securing the plurality of opinion in nationally-transmitted private television, published an interesting report on "*Die Bedeutung des Internets im Rahmen der Vielfaltsicherung*" as part of its Fourth Report on the Development of Media Concentration and Measures to Secure Plurality.⁴⁵⁾ The report finds that the In-

⁴⁴⁾ Goldhaber, *The Attention Economy and the Law* (1997), <http://firstmonday.org/article/view/519/440>.

⁴⁵⁾ Kommission zur Ermittlung der Konzentration im Medienbereich (KEK), 4. Medienkonzentrationsbericht über die Entwicklung der Konzentration und über Maßnahmen

ternet is gaining importance in terms of opinion-formation, but that, due to the heterogeneity of the Internet, one should differentiate between types of offerings as well as between specific offerings. The report suggests a hierarchy of offerings according to their degree of impact on opinion-formation, using as criteria their journalistic relevance, their journalistic genre, the status of their providers, the scope of media reference and their journalistic performance. The report also concludes that, in spite of the present variety of freely accessible online sources of journalistic information, the online media do not make a specific effective and cross-media oriented anti-concentration control redundant.

In Belgium, the Flemish Media Regulator – who has the task to 'map' concentration in the media sector – systematically includes data on Internet media and cross-media links between media companies in its annual reports of the previous years.⁴⁶⁾ The Flemish Media Minister provided in 2012 for structural funding for a "news monitor" as part of the Policy Research Centre for Media, in the context of which four universities (Antwerp, Leuven, Brussels and Ghent) systematically gather and analyse data on the sources (production), content and use of news on various platforms in Flanders, relying to a large extent on content analysis methods.⁴⁷⁾ The Dutch media regulator, Commissariaat voor de Media, has also been paying growing attention to the impact of the Internet – considering it an important platform in the media landscape, whose popularity and effects on public opinion formation cannot be ignored – and to diversity of consumption in its Mediamonitor.⁴⁸⁾ It, however, notes that the Internet is "the medium that is the most difficult to demarcate" and that "it remains to be seen whether it is possible to talk about one market, as the Mediamonitor does for newspapers, radio and television".⁴⁹⁾ During the last meeting of EPRA (European Platform for Regulatory Authorities) in October 2013 in Vilnius, the Commissariaat presented its first thoughts on a European monitoring system for the diversity of news media exposure. The proposed method consists of a cross-national and longitudinal study on the diversity of news media exposure (hence, has two foci: 1. news media and 2. the use of it), that would be conducted every two years among European citizens. The relevant news services would be those which provide news and current affairs on a daily basis via the written press,

men zur Sicherung der Meinungsvielfalt im privaten Rundfunk: Auf dem Weg zu einer medienübergreifenden Vielfaltsicherung (2010) co-authored by *Neuberger/Lobigs*; full report and English summary available from <http://www.kek-online.de/>.

⁴⁶⁾ Available from <http://www.vmrapporten.be/archief>. The same can be said about the regulator in the French-speaking part of the country, *Conseil Supérieur de l'Audiovisuel*, which publishes comparable data on its website: <http://www.csa.be/pluralisme> and <http://www.csa.be/diversite>.

⁴⁷⁾ For more information, see: http://www.steunpuntmedia.be/?page_id=17.

⁴⁸⁾ The Dutch Mediamonitor consists of online information as well as annual reports on the Dutch media landscape, media concentration, ongoing trends, and in-depth analysis on an incidental basis of particular issues related to media pluralism. For more information, see: <http://www.mediamonitor.nl/english/>.

⁴⁹⁾ As stated at: <http://www.mediamonitor.nl/english/internet/>.

television, radio and Internet (CvdM, 2013).⁵⁰ If such a survey would be carried out at EU level, it could provide useful insights into the diversity of exposure to media of citizens (via written press, television, radio and Internet) in the European Member States (and how it develops within and vary between platforms); into the level of diversity of citizens' exposure to news media (via written press, television, radio and Internet) in the European Member States when gathering information specifically about news and current affairs; and about the development of supplier concentration in the European news market. The Commissariat is seeking support with fellow regulators and other stakeholders in order to present it to the European Commission with the view of making it a part of its existing Eurobarometer.⁵¹

A similar focus on news and current affairs also characterises the approach towards media pluralism in the United Kingdom (where the term 'media plurality' is more commonly used). In their plurality reviews to date, *Ofcom* and other regulatory authorities have focused on news and current affairs even though they were not required by the UK regulatory framework to do so. In its June 2012 report on measuring media plurality, *Ofcom* stresses that, for a number of practical and pragmatic reasons, it remains of the view that an assessment of plurality should remain limited to news and current affairs, but that these genres should be considered across television, radio, the press and online.⁵² The House of Lords Select Committee on Communications follows this view in its 2014 report on media plurality, which we will discuss in more detail in the following subsection.

2. United Kingdom

Intensive discussions over issues surrounding media plurality have been prompted in the UK by concerns raised about the proposed (and then dropped) acquisition of BSkyB by News Corporation, by the Leveson Inquiry and by developments at EU level (which will be discussed below). In its so-called public interest test report on the merger (in which *Ofcom* advises the Secretary of State on the media public interest aspects of the case),⁵³ *Ofcom*⁵⁴ suggested that the

⁵⁰ *Commissariaat voor de Media (CvdM)*, A future proof monitoring system: Assessing diversity of news media exposure in a European setting, Presentation at the 38th EPRA Meeting (2013), available from <http://www.epra.org/meetings/vilnius-38th-epra-meeting>. The proposal is also described at <http://www.mediamonitor.nl/english/first-thoughts-on-an-european-monitoring-system-for-the-diversity-of-news-media-exposure/>.

⁵¹ http://ec.europa.eu/public_opinion/index_en.htm.

⁵² *Ofcom*, Measuring Media Plurality – *Ofcom's* advice to the Secretary of State for Culture, Olympics, Media and Sport (2012), available from <http://stakeholders.ofcom.org.uk/consultations/measuring-plurality/>.

⁵³ For more information, see: *Craufurd Smith/Tambini*, Measuring Media Plurality in the United Kingdom: Policy Choices and Regulatory Challenge, EUI Working Papers (2012), http://cadmus.eui.eu/bitstream/handle/1814/23314/RSCAS_2012_36.pdf; sequence=1.

⁵⁴ *Ofcom*, Report on public interest test on the proposed acquisition of British Sky Broadcasting Group plc by News Corporation (2010), available from [Measuring Media Pluralism in the Digital Era](http://stakehold-</p>
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existing framework for considering plurality might no longer be equipped to achieve Parliament's policy objective. The Secretary of State for Culture, Olympics, Media and Sport consequently asked *Ofcom* to formulate an advice on a revised framework for measuring media plurality, which was published in June 2012.⁵⁵ In November 2012, the report by Lord Justice Leveson on his inquiry into the Culture, Practice and Ethics of the Press was released.⁵⁶ Issues of plurality and media ownership were also considered and a number of recommendations were formulated, albeit rather at the level of desirable outcomes and broad policy framework, rather than the technical means of achieving these outcomes. In the first half of 2013, both the House of Lords Select Committee on Communications and the UK Government's Department for Culture, Media & Sport launched a consultation on media ownership and plurality. Two sets of questions have been addressed in these inquiries: a first set revolving around determining a workable method for measuring whether there is an insufficiency of media plurality within the market; a second set seeking for solutions to be used to address plurality concerns when an organisation under review has been found to constitute an undue concentration. Although initially announced for the Fall of 2013, the House of Lords Communications Committee published its Media Plurality Report on February 4th, 2014, accompanied by over 800 pages of evidence that was delivered in written and oral form.⁵⁷

a) *Ofcom*: Proposals for a New Plurality Assessment Framework

In its June 2012 report on measuring media plurality, *Ofcom* stresses the importance of media plurality – which it sees not as a goal in itself but a means to an end – for a well-functioning democratic society.⁵⁸ Media plurality contributes notably through the means of i) Informed citizens – able to access and consume a wide range of viewpoints across a variety of platforms and media owners and by ii) preventing too much influence over the political process exercised by any one media owner. It consequently defines media plurality with reference to desired outcomes of a plural market as follows:

[ers.ofcom.org.uk/binaries/consultations/public-interest-test-nov2010/statement/public-interest-test-report.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/public-interest-test-nov2010/statement/public-interest-test-report.pdf).

⁵⁵ FN 52.

⁵⁶ Leveson, An Inquiry into the Culture, Practices and Ethics of the Press, Report by the Right Honourable Lord Justice Leveson (2012), available from <http://www.levesoninquiry.org.uk>.

⁵⁷ The report and accompanying evidence can be retrieved from <http://www.parliament.uk/business/committees/committees-a-z/lords-select/communications-committee/news/plurality-report/>.

⁵⁸ For the sake of completeness, it should be noted that, after its June 2012 Report, *Ofcom* was asked for further advice by the then Secretary of State under the form of seven supplementary questions relating to further thinking on questions answered in the June 2012 report or to the practical implementation of *Ofcom's* recommendations. The supplementary advice was copied to the Leveson inquiry. The relevant documents can be retrieved from <http://stakeholders.ofcom.org.uk/consultations/measuring-plurality/>.

“a) ensuring there is a diversity of viewpoints available and consumed across and within media enterprises and b) preventing any one media owner or voice having too much influence over public opinion and the political agenda.”⁵⁹

In formulating its advice on an effective framework for considering media plurality, *Ofcom* takes as a starting point that this framework should be based on quantitative evidence and analysis where this is practical, but that there are also important areas where a high degree of judgement is required (continuing that the appropriate approach to exercising such judgement is ultimately for Parliament to debate and determine). It highlights that plurality needs to be considered both within organisations (internal plurality) and between organisations (external plurality). In terms of scope, *Ofcom* finds that a review of plurality should be limited to news and current affairs, as these play the primary role in delivering aforementioned public policy goals, but these genres should be considered across television, radio, the press and online (see below).

It also notes that it has endeavoured to ensure that its advice adheres to the following principles:

- Proportionality – Any additional regulatory interventions are kept to the minimum necessary to achieve the objectives.
- Transparency – The framework should be clear and predictable for stakeholders.
- Simplicity – Metrics and frameworks need to be as simple as possible.
- Practicability – Actions and processes must be straightforward to implement.

To prepare its advice, *Ofcom* commissioned qualitative and quantitative consumer research. The qualitative consumer research included the traditional platforms such as TV, radio and newspapers, as well as the Internet. Interestingly, the research acknowledged the importance of social media as a valuable source for breaking news in its ‘word-of-mouth’ role and as a space where citizens can contribute to the story or debate with others.⁶⁰

Ofcom considers three metrics to be relevant for measuring media plurality: availability, consumption and impact.⁶¹ The availability metrics capture the number of providers at the point of consumption. It is concluded that these metrics are relevant in any plurality assessment, but that they offer limited insight and on their own are not sufficient.⁶² In relation to consumption, *Ofcom* identifies and assesses five categories: volume of consumption, cross-media consumption, revenue, reach and multi-sourcing. It concludes that these consumption metrics should form the foundation of a plurality assessment, in particular share, reach

⁵⁹ *Ofcom* (FN 52) 1.

⁶⁰ *Ofcom* (FN 52) 12.

⁶¹ The following paragraphs are based on: *Lefever/Wauters/Valcke, Media Pluralism in the EU – Comparative analysis of measurements systems in Europe and US* (Deliverable Policy Research Centre on Media) (2013) 15 ff, available from http://www.steunpunt-media.be/?page_id=27.

⁶² *Ofcom* (FN 52) 19.

and multi-sourcing. Share of consumption (using single-sector measurement systems, where this is possible, and cross-media ‘share of references’) is considered a good proxy for measuring *influence* in the news media market, whereas reach (particularly cross-media, using quantitative research) and multi-sourcing (using the same) are seen as good proxies for *diversity* of viewpoints consumed.⁶³ As a third metric, impact is taken into account, which is meant to capture the influence of news content consumption on how people’s opinions are formed. Already in its public interest report on the BSkyB/NewsCorp merger in December 2010, *Ofcom* had noted that how consumers engage with the media may affect the ability of a media owner to influence public opinion. “Where consumers do seek to *question the news they may themselves limit the ability of a media owner to influence public opinion*.” It concluded, however, that it remained unclear how far this can successfully guard against the risk that one controller of media enterprises may have too much influence. The qualitative research that *Ofcom* commissioned for its 2012 report confirmed that individuals can talk about the different sources that may inform their opinions. At the same time, it found that there is no easy way to capture opinion-forming directly. *Ofcom* recommends therefore that proxies of impact should play a part in assessing plurality (for instance the importance people attached to particular sources of news, the level of perceived impartiality, and perceptions of impartiality), but that caution is necessary because of their imperfection. Finally, *Ofcom* highlights the importance of considering also contextual factors (such as regulations, governance models and internal plurality) in order to provide a full picture of plurality.

In sum, *Ofcom* recommends a plurality assessment framework that would make use of a “basket of measures”, placing the most weight on consumption metrics, together with a range of contextual factors (see figure below). It is also stressed that the metrics framework itself should be assessed during each main plurality review in order to capture what cannot be predicted or measured at this moment.⁶⁴

⁶³ *Ofcom* (FN 52) 21.

⁶⁴ *Ofcom* (FN 52) 23.

Figure 3: Recommended measurement framework

Category	Metric	Description	What it indicates
Availability	Number of providers		An indication of the potential for diversity of viewpoints
Consumption	Reach	By platform: TV, Radio, Newspapers, Internet By provider within platform Cross platform	An indication of the diversity of viewpoints disseminated
	Scale of consumption	Within platform: TV, Radio, Newspapers, Internet By provider within platform By platform Cross platform: TV, Radio, Newspapers, Internet Cross platform by provider Full cross platform	Above: Potentially useful in assessing a cross-media merger. It estimates the capacity for each provider to reach the population regardless of platform An indication of the potential concentration in patterns of consumption
Impact	Multisourcing	By platform and cross platform	Above: Note the can be in the form of Ofcom's bespoke share of consumption that captures the reach and frequency of consumption or in the form of average media consumed on each platform derived from industry consumption figures
	Perceived importance	By platform By provider	An indication of the extent to which consumers are sourcing their news from one or a range of sources Provides one proxy for measuring the potential to influence opinion
	A range of factors dependent on the situation	Examples include: Editorial processes Editorial policy Impartiality requirements Market trends and future market developments	

Source: Ofcom (2012) 23.

To trigger a plurality review, *Ofcom* considers two different approaches: a metric-based trigger and a time-based trigger. The first would require a review when a certain threshold would be reached and the latter would be automatically carried out on a periodic basis. When weighing the two options against each other, *Ofcom* favours the time-based trigger. It is argued that a key concern of the metric-based trigger is that it creates a lack of certainty for market players because “at any point in time it is possible that a change in market share by one player will trigger a review of the entire market, in a manner that may not be particularly transparent to the market as a whole”.⁶⁵ Metric-based triggers would also suffer from two important practical limitations: difficulties to agree on a simple set of metrics, on the one hand, and to set the level of the metrics, on the other hand. *Ofcom* concludes that a time-based trigger will provide a higher degree of certainty, simplicity and transparency to the market.

The report dedicates a separate chapter to the online media and highlights that any measurement framework for plurality must be flexible enough to accommodate the evolving nature of the news media market – in particular the rise and rapid evolution of online news in a wide range of forms.⁶⁶ The report considers the online environment in a broad manner: Internet usage regardless of device (PC, tablet, mobile) and both websites and applications are included. Different types of service are considered for instance websites by existing news

⁶⁵) *Ofcom* (FN 52) 28.

⁶⁶) *Ofcom* (FN 52) 24.

providers, stand-alone news sites, and aggregators of online news. App stores, social networks and search engines are also included. *Ofcom* highlights the opportunities of online content: different online formats allow a range of consumption patterns, low barriers to entry, enabling high levels of participation by online media and social media, rapid innovation in online distribution and devices and new online navigation tools such as search and recommendation. However, at the same time there are also potential risks which need to be considered when assessing plurality, such as the potential of navigation tools to reduce plurality of consumption and the potential for new gatekeepers to emerge.⁶⁷ *Ofcom* therefore recommends that online be included in any market assessment, and considers that share (and potentially reach) of the top news websites is the appropriate measure (using UKOM as the source in the immediate future to measure online consumption).⁶⁸ At the same time, it cautions for potential jurisdictional challenges that such inclusion could generate given the global nature of many online players, and admits that the precise nature of future plurality concerns in the online news market are difficult to forecast. It also points out that such inclusion would necessitate a change to the current definition of “media enterprises” in the context of merger control.⁶⁹

b) House of Lords Select Committee Report: Roadmap Towards Reform

Urged by calls from both *Ofcom* and Lord Justice *Leveson* who, in making their proposals relating to plurality, insisted that in a whole range of areas, it is for Parliament to give guidance on the objectives and broad principles of policy relating to plurality, the House of Lords Communications Committee started an inquiry into media plurality in March 2013. It invited interested organisations and individuals to submit written evidence and organized a series of public hearings with a broad range of stakeholders (industry, academics, NGOs...). In February 2014, it released its report, in which it puts forward an innovative, multi-faceted approach to tackling excessive concentrations of media ownership in the UK with the intention “to help the Government to find a way through the vexed maze of debates surrounding media plurality”.

Although it starts by stressing the difficulty to generate consensus and make clear comparisons between different policy approaches to media plurality, the report succeeds in formulating a clear set of principles on which a reform to plurality policy should be based.

Firstly, the focus for assessment should be on news and current affairs rather than other genres, and a plurality policy should hence be limited to the activities of media enterprises engaged in news and current affairs content. The report notes that content diversity in other genres is not unimportant but considers this a matter of independent commissioning or the stipulations set out in licence and Charter renewal agreement.

⁶⁷) *Ofcom* (FN 52) 25.

⁶⁸) UK Online Measurement (UKOM) is the UK’s industry-recognised online media measurement for advertisers, which partnered with comScore in 2013.

⁶⁹) *Ofcom* (FN 52) 26 f.

Secondly, the new system should enable both the assessment of the impact on plurality of organic market change as well as the impact of specific transactions. This will require the introduction of a statutory periodic review of the plurality of the media markets (to be undertaken by *Ofcom* on a 4–5 yearly basis).

Thirdly, assessing plurality properly requires more than one form of measurement, although these should be limited so as not to proliferate out of control; the report suggests “a limited number of different measures which address availability, consumption and impact”.

Fourthly, automatic interventions such as statutory caps are not the best option; they have to be set on a single scale and thus inherently impoverish the assessment that can be made about whether and how to intervene. Although a commonly cited advantage to a single clear-cut cap is that it would provide greater certainty for businesses and organisations facing a review, not one business entity expressed support for the idea, and most supported nuanced or hybrid approaches that would use both quantitative and qualitative measurements of diversity.

Fifthly, online media should be in scope for the assessment of media plurality (given that consensus on this issue across the evidence was very clear).

And, finally, the role for Government, Parliament, regulator and competition authorities will have to be reshaped in protecting the public interest. On the one hand, a new balance will have to be sought between the regulator and Government in terms of decisions to be made about intervention: there should be accountability for politicians where appropriate but the onus should be on *Ofcom* to balance the citizen and consumer interests. On the other hand, there should be clear blue water between competition and plurality policy and their assessments should be distinct; the Government will therefore have to revise also the present system of reviews of media transactions in order to clarify the relationship between competition and plurality policy.

3. European Union

a) Policy Context of the EU Media Pluralism Monitor

As already noted in the introduction, the protection of media pluralism has been a recurrent concern of the European Parliament, inviting the Commission on several occasions since the 1990s to propose concrete measures to safeguard media pluralism.⁷⁰ However, the various consultations held by the Commission in the last fifteen years led to the conclusion that it would be inappropriate to submit a Community initiative on pluralism. The failed attempt to launch a harmonisation Directive on pluralism and media ownership in the mid-1990s⁷¹

⁷⁰ FN 2.

⁷¹ See, for instance, Doyle, From ‘Pluralism’ to ‘Ownership’: Europe’s Emergent Policy on Media Concentrations Navigates the Doldrums, *Journal of Information, Law & Technology* 3 (3) (1997), available from http://www2.warwick.ac.uk/fac/soc/law/elj/jilt/1997_3/doyle; Doyle, Towards a Pan-European Directive? From ‘Concentrations and Pluralism’ to ‘Media Ownership’, *Communications Law* 3 (1) (1998) 11–15. The harmonisation attempt started with the European Commission’s 1992 Green Paper on Pluralism

demonstrated the political sensitivities surrounding the subject and the need for a balanced and realistic approach which should take into account the specificities of media markets in the various Member States.⁷² The successive enlargements of the European Union, with Central and Eastern European countries – characterised by relatively young media markets and intense media reforms – joining, further diminished the feasibility and appropriateness of a uniform approach when it comes to media concentration.

The European Commission has consequently taken a prudent stance on media pluralism in recent years, focusing more on monitoring rather than regulating. During the Barroso I mandate, Commissioner Reding, responsible for Information Society and Media, and Vice-President Wallström, responsible for Institutional Relations and Communication Strategy, launched their “three-step approach” for advancing the debate on media pluralism across the European Union.⁷³ Step 1 consisted of the publication on January 16, 2007 of a Commission Staff Working Paper on Media Pluralism in the Member States of the European Union.⁷⁴ The Working Paper provides a concise discussion of the issues raised by media pluralism and a first survey of Member States’ audiovisual and print media markets. Step 2 was an independent study to define and test concrete and objective indicators for assessing media pluralism in the EU Member States. The results of this study, including a prototype for a Media Pluralism Monitor, were presented to the public in June 2009 and are published on the Commission’s website.⁷⁵ With the change of the Commission’s mandate mid-2009, step 3 was not operationalized; it envisaged the adoption of a soft law instrument (a Commission Communication on indicators for media pluralism in EU Member States) and a follow up study which would systematically apply the media pluralism indicators to all EU Member States in order to measure the health of Europe’s media pluralism.

and Media Concentration in the Internal Market: An Assessment of the Need for Community Action, Commission Green Paper, COM (92) 480 final.

⁷² Valcke, Looking For the User in Media Pluralism Regulation: Unraveling the Traditional Diversity Chain and Recent Trends of User Empowerment in European Media Regulation, *Journal of Information Policy* 1 (2011) 287–320.

⁷³ The following paragraphs are based on Valcke, A European Risk Barometer for Media Pluralism: Why assess damage, when you can map risk? *Journal of Information Policy* 1 (2011) 185–216.

⁷⁴ European Commission, Commission Staff Working Paper: Media Pluralism in the Member States of the European Union, SEC (2007) 32.

⁷⁵ KU Leuven – ICRI, Jönköping International Business School – MMTC, Central European University – CMCS, Ernst & Young Consultancy Belgium (2009), Independent Study on Indicators for Media Pluralism in the Member States – Towards a Risk-Based Approach (Final Report and Annexes: User Guide, MPM, Country Reports, prepared for the European Commission), Brussels: European Commission (2009), available from <http://ec.europa.eu/digital-agenda/en/independent-study-indicators-media-pluralism> (EU MPM Study).

b) The EU Media Pluralism Monitor

The rationale underpinning the Commission's decision to launch a study with a view of developing a monitoring system for media pluralism clearly lies in the need for more transparency and concrete data in a fast-developing media landscape. There is a strong, political appreciation that the traditional approach to media pluralism based on ownership control, linked to share of voice, will no longer be sufficient. An approach based exclusively on ownership assumes that the industry is static, rather than dynamic. According to some, it is even hard to define the media sector these days, given the arrival of new players such as search engines. The Commission's intention was therefore to invest in a robust and multi-faceted monitoring system that would enhance the auditability or "quantifiability" of media pluralism and equip policy makers and regulatory authorities with the tools necessary to detect and manage societal risks in this area. A strong evidentiary basis would help to define priorities and actions for improving media pluralism. The Media Pluralism Monitor ('MPM') which was developed throughout the study will be briefly presented in the following paragraphs.⁷⁶⁾

In the EU MPM Study,⁷⁷⁾ the MPM is characterized as a multi-disciplinary, holistic tool, that starts from a risk-based approach and defines a standardized set of metrics and methods for assessing media pluralism in EU Member States. It is designed as a neutral tool that is compatible with the varying normative, cultural and economic approaches in the countries – it provides a tool for *diagnosis*, *no therapy* – and that aims for quantitative and objective analysis to the largest possible extent (reducing the scope for arbitrary assessments by offering transparent methods and thresholds in cases where a form of subjective judgment would be required). The MPM is claimed to be sufficiently flexible to be adjusted in the light of economic and technological evolutions and as user-friendly and practicable as possible.

Arguing that in mature democracies, media pluralism encompasses political, cultural, geographical, structural and content related dimensions, the MPM starts from a broad notion of media pluralism that includes internal and external pluralism, cultural, political, and geographic dimensions of pluralism, ownership and concentration issues, media contents and formats. The Terms of Reference for the study pointed out that the tool would have to assess the economic, socio-demographic and legal/policy context in which media are offered and consumed, looking at supply (including elements of distribution and infrastructures), demand and use. The range of media covered had to include radio and TV broad-

casting, national and regional press, magazines, together with Internet media, and also take into account the book publishing sector.⁷⁸⁾

In accordance with this broad notion of media pluralism, the MPM has been developed on the basis of three types of indicators (economic, socio-demographic and legal), which assess the performance of media markets, structures and regulations in relation to five dimensions (or 'domains'): media ownership and control, media types and genres, political pluralism in the media, cultural pluralism in the media, and geographic pluralism in the media. Aspects which are of a more general nature, but should be considered essential 'preconditions' for media pluralism, have been isolated in a separate domain, the 'basic domain'. It contains indicators assessing regulatory safeguards for freedom of expression and information, independent oversight, and policies for media literacy.

So, in short, the MPM offers a measurement framework to detect threats to media pluralism:

- in relation to six "risk domains": 1. basic regulatory safeguards, 2. pluralism of media ownership and control, 3. pluralism of media types and genres, 4. political pluralism in the media, 5. cultural pluralism in the media, and 6. geographic pluralism in the media;
- covering three "risk areas" which correspond with the major levels in the media value chain: 1. supply, 2. distribution, 3. use;
- through the combination of three "types of indicators" (166 in total): 1. economic indicators (assessing the range and diversity of media, looking at the supply side and economic performance of the media, such as the number of media companies and concentration and profitability ratios), 2. legal indicators (assessing the presence and effectiveness of policies and legal instruments that support pluralism in Member States), 3. socio-demographic indicators (assessing the range of media available to citizens in different Member States in light of socio-demographic factors like geographic location, social class, age, and gender, and evaluating different types of media markets from an end-user perspective);
- that are scored on the basis of three "border values": 1. low risk (associated with the colour green in the MPM and indicating a "safe zone" where no immediate follow-up is required), 2. moderate risk (associated with the colour orange in the MPM and indicating that follow-up is necessary and that actions or measures are possibly required); 3. high risk (associated with the colour red in the MPM and indicating that threats to media pluralism are serious and require immediate actions or measures).

It is worth noting that the MPM takes exposure diversity – a dimension that is receiving growing attention in both academic and policy discourse⁷⁹⁾ – explic-

⁷⁶⁾ For a more detailed description, see Valcke/Picard/Sükösd/Klimkiewicz/Petkovic/Dal Zotto/Keremans, The European Media Pluralism Monitor: Bridging Law, Economics and Media Studies as a First Step towards Risk-Based Regulation in Media Markets, *Journal of Media Law* 2(1), 85-114 (2010).

⁷⁷⁾ KU Leuven – ICRI, et al (2009). Final Report, 20 ff (Section 4.4. "Basic Features and Implications").

⁷⁸⁾ The explanation given was that the book publishing sector forms part of the media landscape, contributes to the formation of public opinion, and determines to a greater or lesser extent the editorial and commercial strategy of multimedia operators.

⁷⁹⁾ See, for instance, FN 52; Valcke (FN 75); Helberger, Exposure Diversity as a Policy Goal, *Journal of Media Law* 4 (1) (2012) 65-92; Helberger, Media pluralism policies

itily into account; a number of indicators look at consumption of media or aim to identify possible obstacles to exposure diversity.

Several indicators in the MPM refer to online media/Internet, for instance, ownership and readership concentration in Internet content provision; range of citizens using online media to participate in political debate; the level of influence on political and public debate by bloggers; and the proportion of actors representing different cultural and social groups in news contents (looking at print, radio, TV and online).

c) The Proof of the Pudding is in the Eating

Unsurprisingly, the comprehensive approach adopted by the MPM – not only measuring ownership and concentration, but also other restrictive forces, not merely examining external pluralism but also aspects of internal pluralism, and combining quantitative and qualitative indicators – provoked criticism from various sides.⁸⁰ Concerns have been expressed (mainly by parts of industry) that the MPM would engender overregulation and (from academic side) that its focus on empirical indicators might obscure the political implications of such choice.⁸¹ The tool has also been blamed for its complexity, and part of its method has been contested.⁸² At the same time, it was admitted – even by its critics – that the MPM constitutes the most fully elaborated attempt to construct an instrument to measure media pluralism.⁸³ The study team itself stressed in its report that the number of risks and indicators should be considered reasonable in the light of the many aspects covered by the tool and do not preclude any realistic gauging. Pointing to the added value of the MPM – lying precisely in the fact that it brings together a host of previously disparate concerns to offer a multi-faceted approach to media pluralism – the report considered that this is only feasible through a balanced combination of a wide range of indicators.⁸⁴

In the years following the publication of the EU MPM Study and the appointment of the new European Commission in 2009, the MPM suffered from the “NIH-syndrome” (Not Invented Here) and started to gather dust. Initially, Neelke Kroes, Vice-President and European Commissioner for the Digital Agenda, took a different course of action. In October 2011, she appointed a High Level Group on Media Freedom and Pluralism (HLG) to formulate recommendations for the respect, the protection, the support and the promotion of pluralism and

from the user perspective, in *Valcke/Sikösd/Picard* (FN 43); *Napoli*, Exposure Diversity Reconsidered, *Journal of Information Policy* 1 (2011) 246-259.

⁸⁰ Reactions to the Preliminary Final Report that was presented during a stakeholder workshop in Brussels in June 2012, and a response thereto, can be found in more detail in KU Leuven – ICRI, et al (2009) Final Report, 133 ff.

⁸¹ FN 4.

⁸² *Collins/Cave*, Media pluralism and the overlapping instruments needed to achieve it, *Telecommunications Policy* 37 (4-5) (2013) 311-320.

⁸³ FN 85; in a 2009 blog post at <http://www.mediapolicy.org>, Mark Thompson of the Open Society Foundations called it “the most refined and comprehensive instrument ever designed for the assessment of risks to media pluralism”.

⁸⁴ EU MPM Study (FN 78) 21.

freedom of the media in Europe.⁸⁵ She also set up the Centre for Media Pluralism and Media Freedom (CMPF) at the Robert Schuman Centre for Advanced Studies at the European University Institute, with the remit to carry out research, provide training and support public debate among academics, policy makers, regulators, market stakeholders, journalists, and all other directly involved professionals. Both the HLG and CMPF delivered reports at the beginning of 2013, which highlighted that the EU has a clear responsibility to act – at the very least to clarify its competence – and that, in order to take up a more pro-active role, the EU should further invest in monitoring.⁸⁶ Also the European Parliament called recently (again) on the European Commission to take appropriate measures to ensure better monitoring and enforcement of media freedom and pluralism across the EU, given that this right has become legally binding with the entry into force of the Charter of Fundamental Rights (Art 11, § 2).⁸⁷ It is also worth mentioning that, in February 2013, the European Citizens Initiative for media pluralism was launched, collecting signatures until 29th August 2014, and asking for a partial harmonisation of national rules on media ownership and transparency, and setting EU standards for the sufficient independence of the media supervisory bodies.⁸⁸

In response to these calls,⁸⁹ the European Commission launched two public consultations – one on the HLG report and one on the independence of the audiovisual regulatory bodies.⁹⁰ It also awarded in October 2013 a new grant to

⁸⁵ The Group was chaired by the former President of Latvia, Professor Vaira Vīķe-Freiberga. The other members were Professor Herta Däubler-Gmelin (honorary professor at the Freie Universität Berlin and former German Minister of Justice), Professor Luís Miguel Pórigues Pessoa Maduro (former advocate general of the Court of Justice of the EU and Professor at the European University Institute; currently Minister in the Portuguese government) and Ben Hammersley (a British Internet technologist, journalist, author and broadcaster currently based in London, and Editor at Large of Wired UK magazine).

⁸⁶ *Centre for Media Pluralism and Media Freedom (CMPF)*, Policy Report “European Union Competencies in Respect of Media Pluralism and Media Freedom” (2013), <http://cmpf.eui.eu/publications/index.aspx>; *High Level Group on Media Freedom and Pluralism (HLG)*, Report on “A free and pluralistic media to sustain European democracy” (2013), available from <http://ec.europa.eu/digital-agenda/en/high-level-group-media-freedom-and-pluralism>; the HLG Report noted that the EU should be considered competent to act to protect media freedom and pluralism at State level and recommended that the EU should either designate, in the work programme and funding of the European fundamental rights agency, a monitoring role of national-level freedom and pluralism of the media, or establish an independent monitoring centre, ideally as part of academia and partially funded by the EU, but fully independent in its activities.

⁸⁷ European Parliament, Resolution of 21 May 2013 on the EU Charter: standard settings for media freedom across the EU, 2011/2246 (INI).

⁸⁸ For more information, see: <http://www.mediainitiative.eu/>.

⁸⁹ For relevant initiatives at Council of Europe level, see *EPRA*, Assessing Pluralism in an Online World – Background document to plenary session 2, 38th EPRA Meeting (2013), available from <http://www.epra.org/meetings/vilnius-38th-epra-meeting>.

⁹⁰ Both public consultations have been closed; the responses of participants are available via <http://ec.europa.eu/digital-agenda/en/consultations-media-issues>.

the CMPF to conduct a pilot implementation of the MPM.⁹¹⁾ The Centre, acting independently from the Commission and Member States, will update the indicators used in the MPM in the light of the growing importance of the Internet and subsequently conduct a pilot implementation of the Monitor in a sample of nine EU Member States. The countries have been selected according to objective criteria (such as geopolitical situation, population size and economic wealth, and level of attention by the European institutions in previous years) and include: Belgium, Bulgaria, Denmark, Estonia, France, Greece, Hungary, Italy and UK.⁹²⁾ The results of the pilot are expected in July 2014 and should enable the (incoming) Commission to obtain a better understanding of the risks to media pluralism in the sample of nine EU Member States and of the feasibility of the roll-out of an EU-wide monitoring tool. Or, as the old proverb goes, *the proof of the pudding is in the eating ...!*

⁹¹⁾ <http://cmpf.eu.eu/News/All/131015MediaPluralismMonitor.aspx>.

⁹²⁾ These criteria and how they are expected to guarantee a balanced sample of EU Member States are further explained at the website of the CMPF: <http://cmpf.eu.eu/News/All/131211MPMninecountries.aspx>.

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Meinungsvielfalt und Medienvielfalt als Verfassungsbegriffe

- I. Einleitung: Von 1993 bis 2013 – Rechtsprechung und Mediennutzung im Umbruch
- II. Meinungsvielfalt
 1. Allgemeines
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 3. Meinungsvielfalt und Informationsfreiheit: Die Perspektive der Rezipienten
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 1. Ausgangspunkt: Medienvielfalt als Rechtsbegriff in völkerrechtlichen Verträgen
 2. Medienvielfalt als Gewährleistungsinhalt von Art 10 EMRK und Art 1 BVG Rundfunk
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- IV. Vielfaltsgarantien in der demokratischen (Kommunikations-)Verfassung
- V. Schluss: Zur normativen Bedeutung des Vielfaltsgebots

I. Einleitung: Von 1993 bis 2013 – Rechtsprechung und Mediennutzung im Umbruch

Vor genau 20 Jahren brachte eine Linzer Vereinigung von Wohnungseigentümern das österreichische Rundfunkmonopol zu Fall. Man muss sich nur das Verfahrensziel des Informationsvereins Lentia vor Augen führen, um sich die Entwicklung auf dem Sektor elektronischer Medien bewusst zu machen: ein hausinternes Kabelfernsehnetz zur Verbesserung der Kommunikation unter den Hausbewohnern. Für die zu behandelnde Themenstellung ist die Ziffer 38 des Urteils Informationsverein Lentia von Bedeutung. Der EGMR betont darin den Zusammenhang zwischen der Meinungsfreiheit und einer demokratischen Gesellschaft, ja er betont deren fundamentale Rolle insbesondere dort, wo die Presse Informationen und Ideen von allgemeinem Interesse vermitteln soll, die darüber hinaus von der Öffentlichkeit empfangen werden dürfen. Und dann taucht hier ganz zentral das Vielfaltsgebot auf, wenn es heißt:

„Eine solche Verpflichtung kann nicht mit Erfolg erfüllt werden, es sei denn, sie ist auf den Grundsatz der Vielfalt gegründet, für den der Staat die Letztverantwortung hat“.

Und weiter heißt es: